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6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
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9 JERRY SELBACH,

10 *Petitioner,*

11 vs.

12 J. PALMER, *et al.*

13 *Respondents.*
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3:10-cv-00541-LRH-VPC

ORDER

16 This matter comes before the Court on petitioner's application (#1) to proceed *in forma*
17 *pauperis* and for initial review under Rule 4 of the Rules Governing Section 2254 Cases. The filing
18 fee has been paid, and the pauper application therefore will be denied as moot. Following upon initial
19 review, service and a response will be ordered.

20 IT THEREFORE IS ORDERED that petitioner's application (#1) to proceed *in forma pauperis*
21 is DENIED as moot.

22 IT FURTHER IS ORDERED that the Clerk of Court shall file the petition and shall return a
23 copy to petitioner.

24 IT FURTHER IS ORDERED that the Clerk shall add Attorney General Catherine Cortez Masto
25 (listed under Cortez) as counsel for respondents and shall make informal electronic service of this order
26 upon respondents by directing a notice of electronic filing to her.

27 IT FURTHER IS ORDERED that respondents shall have sixty (60) days from entry of this order
28 within which to answer, or otherwise respond to, the petition, including by motion to dismiss. **Any**

1 **response filed shall comply with the remaining provisions below, which are tailored to this**
2 **particular case based upon the Court's screening of the petition and which are entered pursuant**
3 **to Rule 4 of the Rules Governing Section 2254 Cases.**

4 IT FURTHER IS ORDERED that any procedural defenses raised in this case shall be raised
5 together in a single motion to dismiss. The Court notes that there appears to be a substantial question
6 on the face of the papers presented as to whether all claims in the federal petition are fully exhausted.
7 The Court in particular does not wish to entertain a motion to dismiss that focuses solely on any alleged
8 pleading deficiencies in the allegations of the federal petition that does not also address any alleged
9 exhaustion issues on an adequate record. Respondents further shall not file a response in this case that
10 consolidates their procedural defenses, if any, with their response on the merits.

11 IT FURTHER IS ORDERED that, **without regard to whether the initial response is a motion**
12 **to dismiss or instead an answer**, respondents shall file – and serve upon petitioner – a single set of
13 state record exhibits relevant to the petition, which shall include but not necessarily be limited to copies
14 of **all** of the following:

- 15 (a) any preliminary hearing transcript, if prepared previously;
- 16 (b) the pre-plea charging instrument(s) in the state district court;
- 17 (c) the written plea agreement(s) and amended charging instrument(s);
- 18 (d) any plea colloquy transcript(s), if prepared previously;
- 19 (e) the sentencing transcript(s), if prepared previously;
- 20 (f) any presentence investigation report(s), psychosexual evaluation(s), and written
21 victim impact statement(s), all of which may be filed under seal;
- 22 (g) the judgment(s) of conviction;
- 23 (h) the briefing and/or fast track statements on the consolidated direct appeals;
- 24 (i) the order of affirmance and remittitur(s) on the consolidated direct appeals;
- 25 (j) the initial, likely proper person, state post-conviction petition(s);
- 26 (k) all supplements filed by post-conviction counsel presenting claims;
- 27 (l) the transcript of the state evidentiary hearing(s);
- 28 (m) the written decision(s) of the state district court on the petition(s);

- (n) all papers accepted for filing by the state supreme court presenting petitioner's claims on the consolidated post-conviction appeals;
- (o) the order of affirmance and remittitur(s) on the consolidated post-conviction appeals; and
- (p) the "motion for new sentencing" referenced in the federal petition (see response to query 7 on page 2 and the "other proceedings" exhaustion responses), all state court written decisions thereon, and any remittiturs issued in connection therewith.

IT FURTHER IS ORDERED that the exhibits filed herein by respondents shall be filed with a separate index of exhibits identifying the exhibits by number. The CM/ECF attachments that are filed further shall be identified by the number or numbers of the exhibits in the attachment, in the same manner as in No. 3:06-cv-00087-ECR-VPC, ## 25-71. The purpose of this provision is so that the Court and any reviewing court thereafter will be able to quickly determine from the face of the electronic docket sheet which exhibits are filed in which attachments. In short, respondents shall not file exhibits in a manner that requires this Court or a reviewing court to go "fishing" through multiple unmarked attachments to find specific exhibits.

IT FURTHER IS ORDERED that counsel additionally shall send a courtesy copy hard copy of the exhibits to, for this case, the Las Vegas Clerk's Office, with a cover sheet that clearly states "Staff Attorney – Courtesy Copy."

IT FURTHER IS ORDERED that petitioner shall have thirty (30) days from service of the answer, motion to dismiss, or other response to mail a reply or opposition to the Clerk for filing. The deadlines established herein shall override any shorter deadlines established in any form order issued under the *Klinge* decision.

IT FURTHER IS ORDERED that henceforth, petitioner shall serve upon respondents or, if appearance has been entered by counsel, upon the individual deputy attorney general identified in the notice of appearance, a copy of every pleading, motion or other document submitted for consideration by the Court. Petitioner shall include with the original paper submitted for filing a certificate stating the date that a true and correct copy of the document was mailed to respondents or counsel for

1 respondents. If counsel has entered a notice of appearance, petitioner shall direct service to the
2 individual attorney named in the notice of appearance, at the address stated therein. The Court may
3 disregard any paper received by a district judge or magistrate judge which has not been filed with the
4 Clerk, and any paper received by a district judge, magistrate judge or the Clerk which fails to include
5 an appropriate certificate of service.

6 DATED this 28th day of October, 2010.



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10 LARRY R. HICKS
11 UNITED STATES DISTRICT JUDGE
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